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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Fourth session

Summary record of the 42nd meeting

Held at the Palais des Nations, Geneva, on Tuesday, 9 April 2013, at 3 p.m.

Chairperson: Mr. Decaux

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention

Initial report of Uruguay (CED/C/URY/1)

1. *At the invitation of the Chairperson, the delegation of Uruguay took places at the Committee table.*

2. **Mr. González** (Uruguay), presenting the initial report of Uruguay (CED/C/URY/1), said that the meeting was an important one because Uruguay was the first State party to submit a report to the Committee.

3. Uruguay had ratified all the core human rights treaties and their optional protocols and extended a standing invitation to rapporteurs and experts of the international and the inter-American systems to visit the country. His delegation presented its initial report in the same constructive spirit and offered the Committee its full cooperation.

4. The majority of cases of enforced disappearance dated back to the civil-military Government and remained unresolved, but efforts in that regard had been made before the adoption of the Convention. When democracy had been restored, many victims and relatives had brought cases before the courts but had encountered legal and political impediments that prevented their resolution. Between 1986 and 2005, under Act No. 15848, the Act on the Expiry of the Punitive Claims of the State, cases had been closed and no one responsible for serious human rights violations had been tried. The process of revoking the Act and re-establishing the State's punitive claim had been fraught with difficulties. The Convention represented an important step by the international community to prevent the crime of enforced disappearance.

5. Since the publication of the report, the Uruguayan Supreme Court had declared unconstitutional two articles of Act No. 18831, which stipulated that no period of limitation or expiry would apply between 22 December 1986 and the entry into force of the Act. That ruling meant that the Act could not be applied retroactively and introduced the idea that offences committed prior to the entry into force of Act No. 18831 were not imprescriptible. As a result, the statute of limitations was being applied differently to different cases of enforced disappearance before the courts.

6. **Mr. Perazza** (Uruguay) said it should be borne in mind that the report had been drafted in September 2012 and did not contain information from the past six months. Every effort had been made to include not only advances made in respect of the implementation of the Convention, but also the challenges faced.

7. He clarified his country's application of four of the Convention articles. In reference to article 1, enforced disappearance was strictly prohibited in the country's domestic legislation at all times. Furthermore, under article 27 of the American Convention on Human Rights, Uruguay could not suspend guarantees such as the right to life, that would preclude enforced disappearance, irrespective of the internal situation in the country. In reference to article 2, Uruguay defined enforced disappearance in article 21 of Act No. 18026 and that definition had a broader scope than that of the Convention on two accounts: it applied not only to depriving a victim of liberty but also to the refusal to provide information on the victim's whereabouts or details of the deprivation of liberty. Also, enforced disappearance was considered a continuing offence until the victim's whereabouts or fate had been discovered. Lastly, he emphasized that Act No. 18026 provided for compliance with the Convention in Uruguay's legislation by criminalizing enforced disappearance in domestic law (art. 4) and defining the widespread or systematic practice of enforced disappearance as a crime against humanity (art. 5).

8. **Mr. López Ortega** questioned whether Uruguay had explicitly applied all the international human rights treaties in its domestic legal order since, in the 2010 concluding observations of the Committee on Economic, Social and Cultural Rights, the Committee had expressed concern at the lack of clarity on the status of the Covenant in the domestic legal order. Similarly, the State party's 1996 core document stated that, "under domestic law, treaties have the same status as ordinary law". He asked whether the Convention on Enforced Disappearances was in fact superior to the Constitution. Could it be evoked by lawyers and judges in court? Could it be referred to in the appeal process before the Supreme Court?

9. He asked whether the National Human Rights Institution, important in the prevention of both enforced disappearances and torture, would have sufficient resources to fulfil its mandate. The delegation had omitted to answer question 4 in the list of issues requesting further information on criminal legislation applicable to participation and attempted participation in enforced disappearance.

10. He wished to know under what circumstances an individual would be imprisoned under Act No. 18026 for the minimum sentence of 2 years as opposed to 25 years; how the State party could maintain that there was no statute of limitation for enforced disappearance whereas the Supreme Court had twice handed down sentences for homicide rather than for enforced disappearance on the grounds that Act No. 18026 could not be applied retroactively; whether a person suspected of committing an offence of enforced disappearance would always be subject to pretrial detention or whether other measures could be applied; and whether the State party intended to adopt measures other than Act No. 18215 to ensure the protection not only of police but of all persons involved in criminal procedures. He asked for further details on the procedural protocol issued by the Human Rights Secretariat on the search, recovery and analysis of the remains of disappeared persons. He wondered to what extent violence or coercion against persons such as victims and witnesses was criminalized in national law; and whether provisions such as disqualification existed to prevent persons suspected of committing offences of enforced disappearance from influencing investigations.

11. In addition, he requested information on what special jurisdiction and measures, if any, applied in cases of enforced disappearance to ensure the independence of judges and investigations; on plans to reform the Public Prosecution Service and criminal procedures to provide victims a central and independent role in investigations; on specific agreements on extradition which Uruguay had signed before ratifying the Convention; on legislation pertaining to the extradition of Uruguayan nationals; and on any treaties signed by Uruguay on the subject of mutual legal aid in cases of enforced disappearances.

12. **Mr. Camara** commended Uruguay's recent efforts in the area of enforced disappearances, especially in the light of the country's difficult past. It was particularly noteworthy that the country had criminalized enforced disappearance in domestic law, defined even isolated cases of enforced disappearance as crimes against humanity, ensured the inapplicability of the statute of limitations, prohibited all amnesty in that regard, and established the liability of civil and military officials, regardless of their rank.

13. He asked what steps were usually taken in cases of enforced disappearance to bring non-State actors to justice and whether they were treated as ordinary criminals or, given that enforced disappearance was defined as a crime against humanity, whether special measures were applied. He also requested clarification of the provision to disqualify citizens found guilty of enforced disappearance: disqualification could be an effective way to prevent repeat offences, and yet the report implied that offenders would be disqualified only for the duration of their sentence and no longer. Lastly, he noted that, in cases where Uruguay had no extradition treaty with another State party, it could, under article 5, use the

Convention as the necessary legal basis, and he wondered whether that possibility was reflected in the State party's legislation and regulations.

14. **Ms. Janina** asked how frequently the State party had consulted with civil society during the drafting of the report and to what extent it had incorporated the recommendations of civil society organizations into the final report.

15. **Mr. Al-Obaidi** wished to know in what way the treatment of crimes against humanity in Uruguayan law differed from the treatment of ordinary crimes since in both cases victims were guaranteed certain rights. Moreover, he wondered whether it was the public prosecutor, the police or some other authority that was responsible for investigations in the justice system. Lastly, he observed that, although Uruguay endeavoured to exercise universal jurisdiction in all cases of enforced disappearance, there were still discrepancies with the concept of universal jurisdiction as applied in the Convention.

16. **Mr. Huhle** expressed concern with regard to the recent ruling by the Supreme Court, which essentially meant that the statute of limitations would apply to international crimes against humanity, including enforced disappearance, and appeared to be a major step backwards. He wished to know what strategies were being considered to address that difficult situation and ensure that the State party complied fully with its obligations under the Convention.

17. **Mr. Hazan** asked the delegation to comment on the reasons for the discrepancies between the information provided by the State party in its report and that provided by the association of relatives of victims on the number of victims of enforced disappearance in Uruguay. He requested information on whether the Armed Forces and security forces still contained members who had been accused or suspected of having participated in or committed enforced disappearances and whether the State party had made efforts to democratize and modernize the Armed Forces and security forces. He asked the delegation to comment on the transfer of Judge Mota, who had been dealing with a number of criminal investigations related to enforced disappearances. The Committee was concerned that it might indicate a lack of independence in the judiciary. Was such a transfer exceptional or did it fall within the normal legal and constitutional parameters?

18. **Mr. Mulembe** wished to know the status of the National Human Rights Institution, and requested information on its operations at the national level.

19. **Mr. Yakushiji** asked whether only conventions that set forth fundamental rights that were inherent to human dignity had a higher status than ordinary laws in the Uruguayan legal order. Were all provisions of the Convention directly applicable or only those that fulfilled the requirements defined in article 72 of the Constitution? For example, were the provisions on non-refoulement and the right of a victim to know the truth and obtain reparations self-executing in national law? He asked the delegation to explain how the State party dealt with foreign State officials' immunity from criminal prosecution if Uruguayan courts were to exercise universal jurisdiction according to the principle of *aut dedere aut judicare*.

The meeting was suspended at 4.10 p.m. and resumed at 4.30 p.m.

20. **Mr. González** (Uruguay), referring to the Convention's rank in the domestic legal order, said that the Constitution did not establish the status of international treaties ratified by Uruguay. However, the position adopted by the State party, and supported by the Supreme Court, was that international human rights conventions had constitutional status on the basis of article 72 of the Constitution because they dealt with rights inherent to human dignity.

21. With reference to the cases in which criminal acts had been punished as aggravated homicide rather than enforced disappearance, he explained that the crime of enforced

disappearance had been introduced into Uruguayan law under Act No. 18026 of 2006. According to the Supreme Court, the criminal offence of enforced disappearance could not be applied retroactively to criminal acts committed prior to the introduction of that crime into Uruguayan law. Earlier criminal acts were therefore tried as aggravated homicide, but acts that occurred after the entry into force of Act No. 18026 could be tried as enforced disappearance.

22. **Mr. Perazza** (Uruguay) said that the National Human Rights Institution was the national mechanism for the prevention of torture. The Institution coordinated its work with that of other mechanisms such as the Ombudsman's Office and the Parliamentary Commissioner for Prisons. The Institution had already begun work in a number of detention facilities, with the ultimate goal of reaching all facilities, including psychiatric hospitals and police stations. One of the areas of concern was the situation of minors in detention.

23. The accreditation process before the International Coordinating Committee of National Human Rights Institutions (ICC) could only begin once the National Human Rights Institution had presented its report to Parliament, which it planned to do that month. One of the requirements for accreditation was that the institution should have been operational for one year, which would be the case in May 2013. With regard to the budgetary autonomy of the National Human Rights Institution, he explained that the Institution had its own budget, which it presented to the Senate for approval. It was the Institution's hope that legal amendments would be introduced allowing the establishment, under the budget of the Uruguayan Parliament, of an executive unit, which would result in even greater autonomy.

24. **Mr. Miranda** (Uruguay), referring to the sentences applicable for the crime of enforced disappearance, said that article 21 of Act No. 18026 established a minimum sentence of 2 years' rigorous imprisonment and a maximum of 25. Prisoners sentenced to rigorous imprisonment could not be released on parole. It was true that there was wide sentencing discretion, ranging from 2 to 25 years. Those penalties applied to isolated acts, which also constituted crimes against humanity in Uruguay. Under the Act, the crime of enforced disappearance included the deprivation of liberty, the refusal to acknowledge the deprivation of liberty and concealment. Political groups were also covered by the definition of genocide in the Act, and the penalties ranged from 15 to 30 years' rigorous imprisonment, which was the maximum in the Uruguayan system. In such cases, it was mandatory for the judge to order pretrial detention. The Criminal Code expressly stipulated that attempted disappearance was subject to one third of the penalty, and possibly half, depending on the gravity of the act and the risk posed by the perpetrator.

25. **Ms. Fulco** (Uruguay) said that the State shared the concerns of the representatives of victims that they should play a greater role in proceedings, and that was reflected in the draft amended Code of Criminal Procedure. The Police Procedures Act also contained provisions on the right to adequate protection of victims and the right to information. Anyone connected to the victim who felt that their physical integrity was affected in any way could inform the judge, who would take the necessary measures to ensure their protection. An assistance centre for victims of crime was currently being set up under the Ministry of the Interior.

26. **Ms. Jorge** (Uruguay) said that the protocol on the procedure for the search, recovery and analysis of the remains of disappeared detainees had recently been published by the Human Rights Secretariat of the Office of the President of the Republic. Although the procedures had previously been in place, they had never been set out in a single document. The protocol outlined the order in which technical operations were to be carried out. The delegation would provide the Committee with a copy of the protocol. Great importance was attached in the protocol to procedures involving contact with the relatives of the victims, which were extremely sensitive. All the necessary steps must have been completed before

there could be any communication with the relatives. Once they had been informed, the relatives of the victims were provided with assistance and support.

27. **Mr. Miranda** (Uruguay), referring to the penalties applicable for obstructing an investigation, said that there were no specific provisions in relation to enforced disappearance, but that the range of offences listed in the Criminal Code was considered sufficient to prevent and punish acts that constituted an obstruction of justice. There were no plans to create special courts to deal with cases of enforced disappearance. There had been discussions on the possibility of establishing special human rights courts, but ultimately all courts could be considered human rights courts given that the overarching objective of criminal justice was to protect fundamental rights.

28. The establishment of a higher council of the judiciary and a constitutional court would require constitutional reforms. Although future constitutional reforms might well be undertaken to overhaul the entire justice system, there were no such plans at present. Moves were being made, however, to restructure the Public Prosecution Service in the interests of greater decentralization. One of the main functions of the National Human Rights Institution was, he noted, to propose structural reforms.

29. **Mr. González** (Uruguay) said that the draft new Code of Criminal Procedure provided for the participation of victims in criminal proceedings.

30. **Mr. Perazza** (Uruguay) stressed that there were no legal or political obstacles in Uruguay to implementing the extradition treaties it had signed. The Convention was the authoritative legal framework for extradition where there was no specific legislation in that regard. Accordingly, no legislative or institutional changes were required to proceed with extraditions. Extradition agreements signed by Uruguay before the entry into force of the Convention had provided that enforced disappearance did not constitute a political crime. That included the bilateral agreements with Argentina, Chile and Mexico, which, although not referring explicitly to enforced disappearance, allowed for extradition for offences carrying a maximum penalty of at least 2 years' imprisonment. Another example was the extradition treaty between Uruguay and Spain, which dated back to 1996. Uruguay thus permitted the extradition of its nationals for crimes of enforced disappearance in accordance with national case law and the international human rights agreements to which the State was a party.

31. He further noted that the report submitted by Uruguay had been drafted in cooperation with the relevant State bodies and had involved informal consultations with civil society. The report had been presented and formally submitted to NGOs, and his Government appreciated the contributions that had been made by civil society in the form of the three NGO reports before the Committee, which provided an alternative perspective.

32. **Mr. Miranda** (Uruguay) recalled that, at the time of drafting the Convention, it had been decided following a lengthy debate that article 2 of the Convention should not refer to non-State actors but to agents of the State and persons or groups of persons acting with the authorization, support or acquiescence of the State. His Government had endorsed that decision since Uruguayan legislation distinguished between acts committed by State agents and those committed by non-State agents. In Uruguay, violations carried out by parties that were independent of the State — and which therefore did not constitute State terrorism — were not punishable under Act No. 18026. However, the Criminal Code contained sufficient provisions to punish private individuals committing ordinary crimes.

33. **Mr. González** (Uruguay) emphasized that crimes against humanity and ordinary crimes were not placed on an equal footing. Under the Supreme Court decision mentioned earlier, proceedings could not be instituted retroactively for crimes of enforced disappearance, in which case such violations were prosecuted as ordinary crimes. However, domestic legislation did clearly distinguish between ordinary crimes and crimes against

humanity and Act No. 18026 established that enforced disappearance constituted a crime against humanity.

34. **Mr. Miranda** (Uruguay) said that Act No. 18026 further provided for cooperation with the International Criminal Court, introduced the concept of crimes against humanity into domestic law and established different categories of crime according to their gravity. Under the Uruguayan judicial system, the person responsible for conducting an investigation was the judge hearing the case and prosecutors were not involved. Plans were under way to amend the Code of Criminal Procedure to put the Public Prosecution Service in charge of the investigation, with the assistance of the police force, bearing in mind that there was no criminal investigation police in Uruguay. Lastly, he said that Uruguayan domestic law had universal jurisdiction, as demonstrated by article 4 of Act No. 18026.

35. **Mr. González** (Uruguay) said that the Supreme Court had issued its decision regarding the statute of limitations on crimes against humanity, including enforced disappearances, in accordance with its powers under the Constitution, and that that decision was binding. Its direct repercussions on ongoing court proceedings relating to cases of enforced disappearance committed during the dictatorship were the application of the statute of limitations and the principle of non-retroactivity. It was difficult to predict the longer-term impact of the decision until the judiciary had expressed its own view on the subject. He had nevertheless been informed of a recent decision by a court of appeal upholding the ruling of a lower court that did not strictly comply with the Supreme Court's decision. Furthermore, in the high-profile case of enforced disappearance of a judge, the prosecutor had voiced her opinion that the statute of limitations should not apply because the act perpetrated was a crime against humanity.

36. **Ms. Fulco** (Uruguay) said that the Government's assessment of the number of victims of enforced disappearance was consistent with that of the families of victims, namely 178 cases. That figure took into account Uruguayan citizens who had disappeared not only in Uruguay but also in various other countries of the region where they had been transferred and detained, before and during *Operación Condor*. However, the figure did not take into account persons who had disappeared temporarily, which might explain any discrepancies. Moreover that figure was subject to change as new cases had been filed in the past year and were currently under review.

37. **Mr. Miranda** (Uruguay) added that victims who had been temporarily held incommunicado — and whose families had not requested their recognition as victims of enforced disappearance — had not been included in the count.

38. **Mr. González** (Uruguay) said that the executive branch of Government was unaware of the reasons for the transfer of Judge Mota from a criminal court to a civil court and that the judiciary should be able to provide an explanation in that regard. He had no information concerning the suspected cases of disappearance within the armed forces but said he would enquire into the matter and keep the Committee informed.

39. **Mr. López Ortega** said he was very concerned at the cases in which the Supreme Court had handed down rulings of homicide instead of enforced disappearance. If it was a matter of applying the most favourable law, it was difficult to understand why a ruling of homicide should be issued, since that offence carried a heavier maximum penalty than the crime of enforced disappearance. Drawing attention to the potentially harmful implications of such developments for the future, he sought further clarification on the subject. He welcomed the information regarding the budgetary independence of the National Human Rights Institution and called for the establishment of measures to monitor internment in psychiatric institutions. Further attention should be given to the protection measures available to witnesses in court proceedings, which appeared to fall below the standard required by the Convention, and more information would be welcome on the protection

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measures under the protocol on the procedure for the search, recovery and analysis of the remains of disappeared detainees. Lastly, he fully agreed that institutional reform was essential in order to strengthen the independence of the judiciary.

40. **Mr. Camara**, noting that the crime of enforced disappearance was punishable by 2 to 25 years' imprisonment, said he was concerned that perpetrators of crimes of enforced disappearance could be sentenced to as little as 2 years' imprisonment. Was that consistent with domestic legislation — which established enforced disappearance as a crime against humanity — or with the State party's obligations under the Convention, which required that sentences should reflect the gravity of the crime? In addition, was Uruguay giving consideration to the application of aggravating circumstances, as recommended by the Convention, such as in the case of crimes committed against children, persons with disabilities and pregnant women, or were there already provisions in that respect in domestic legislation?

41. **Mr. Miranda** (Uruguay) said that homicide was indeed subject to a harsher penalty than enforced disappearance but the issue at stake in the Supreme Court's decision was the statute of limitations. If a crime was classified as a homicide, rather than enforced disappearance, the statute of limitations began to run from 1 March 1985 — the date of the return of democracy — regardless of the date on which the events had occurred.

The meeting rose at 6 p.m.